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REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS TWENTY-EIGHTH SESSION

Report of the Sixth Committee

Rapporteur: Mr. Walid OBEIDAT (Jordan)

I. INTRODUCTION

1. The item entitled "Report of the United Nations Commission on International Trade Law on the work of its twenty-eighth session" was included in the provisional agenda of the fiftieth session of the General Assembly pursuant to Assembly resolution 49/55 of 9 December 1994.

2. At its 3rd plenary meeting, on 22 September 1995, the General Assembly, on the recommendation of the General Committee, decided to include the item in its agenda and to allocate it to the Sixth Committee.

3. For its consideration of the item, the Sixth Committee had before it the following documents:

(a) Report of the United Nations Commission on International Trade Law on the work of its twenty-eighth session; 1/

(b) Report of the Secretary-General on the implementation of paragraph 8 of General Assembly resolution 49/55 on granting travel assistance to delegates of developing countries (A/50/434).

4. The Sixth Committee considered the item at its 3rd to 5th and 35th meetings, from 26 to 28 September and on 9 November 1995. The views of the

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1/ Official Records of the General Assembly, Fiftieth Session, Supplement No. 17 (A/50/17).

representatives who spoke during the Committee's consideration of the item are set out in the relevant summary records (A/C.6/50/SR.3-5 and 35).

5. At the 3rd meeting, on 26 September, the Chairman of the United Nations Commission on International Trade Law at its twenty-eighth session introduced the report of the Commission on the work of that session.

6. At the 5th meeting, on 28 September, the Chairman of the Commission made a closing statement.

II. CONSIDERATION OF PROPOSALS

A. Draft resolution A/C.6/50/L.4

7. At the 35th meeting, on 9 November, the representative of Austria, on behalf of Algeria, Argentina, Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Canada, Croatia, the Czech Republic, Denmark, Ecuador, Egypt, Finland, Germany, Greece, Guatemala, Honduras, Hungary, Italy, Kenya, Mexico, Morocco, Norway, Peru, Poland, Portugal, Singapore, Slovakia, Spain, Sweden, Turkey, Uganda, Uruguay and Venezuela, later joined by Albania, Azerbaijan, Bulgaria, Cyprus, France, India, Myanmar, Nigeria and Thailand, introduced a draft resolution entitled "Report of the United Nations Commission on International Trade Law on the work of its twenty-eighth session" (A/C.6/50/L.4).

8. At the same meeting, the Committee adopted draft resolution A/C.6/50/L.4 (see para. 12, draft resolution I).

9. The representative of the Russian Federation made a statement after the adoption of the draft resolution (see A/C.6/50/SR.35).

B. Draft resolution A/C.6/50/L.5

10. At the 35th meeting, on 9 November, the representative of Austria, on behalf of Australia, Austria, Bosnia and Herzegovina, Canada, Croatia, the Czech Republic, Denmark, Ecuador, Finland, Guatemala, Honduras, Hungary, Italy, Norway, Portugal, Singapore, Slovakia, Spain, Sweden, the United Kingdom of Great Britain and Northern Ireland and the United States of America, later joined by France and Thailand, introduced a draft resolution entitled "United Nations Convention on Independent Guarantees and Stand-by Letters of Credit" (A/C.6/50/L.5).

11. At the same meeting, the Committee adopted draft resolution A/C.6/50/L.5 without a vote (see para. 12, draft resolution II).

III. RECOMMENDATIONS OF THE SIXTH COMMITTEE

12. The Sixth Committee recommends to the General Assembly the adoption of the following draft resolutions:

DRAFT RESOLUTION I

Report of the United Nations Commission on International Trade Law on the work of its twenty-eighth session

The General Assembly,

Recalling its resolution 2205 (XXI) of 17 December 1966, by which it created the United Nations Commission on International Trade Law with a mandate to further the progressive harmonization and unification of the law of international trade and in that respect to bear in mind the interests of all peoples, in particular those of developing countries, in the extensive development of international trade,

Reaffirming its conviction that the progressive harmonization and unification of international trade law, in reducing or removing legal obstacles to the flow of international trade, especially those affecting the developing countries, would significantly contribute to universal economic cooperation among all States on a basis of equality, equity and common interest and to the elimination of discrimination in international trade and thereby to the well-being of all peoples,

Stressing the value of participation by States at all levels of economic development and from different legal systems in the process of harmonizing and unifying international trade law,

Having considered the report of the United Nations Commission on International Trade Law on the work of its twenty-eighth session, 2/

Mindful of the valuable contribution to be rendered by the Commission within the framework of the United Nations Decade of International Law, particularly as regards the dissemination of international trade law,

Concerned about the relatively low incidence of expert representation from developing countries at sessions of the Commission and particularly of its working groups during recent years, owing in part to inadequate resources to finance the travel of such experts,

Having considered the report of the Secretary-General, 3/

Concerned about the fact that the need for and interest in the training and assistance programme of the Commission can only partially be met, in view of the limited human and financial resources available, and that the work of the Secretariat in the context of the Case-Law on the United Nations Commission on International Trade Law texts would substantially increase as the number of the court decisions and arbitral awards covered thereby grows,

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2/ Official Records of the General Assembly, Fifteth Session, Supplement No. 17 (A/50/17).

3/ A/50/434.

1. Takes note with appreciation of the report of the United Nations Commission on International Trade Law on the work of its twenty-eighth session;

2. Takes note with satisfaction of the completion and adoption by the Commission of the draft Convention on Independent Guarantees and Stand-by Letters of Credit; 4/

3. Commends the Commission for the progress made at its twenty-eighth session in the preparation of a draft Model Law on Legal Aspects of Electronic Data Interchange and Related Means of Communication, as well as in the preparation of draft Notes on Organizing Arbitral Proceedings, and in this connection welcomes the decision of the Commission to continue its consideration of the draft Model Law and the draft Notes with a view to completing its work during its twenty-ninth session;

4. Welcomes the decision of the Commission to commence work on the subjects of receivables financing and cross-border insolvency, and to consider the feasibility and desirability of undertaking work on negotiability and transferability of electronic data interchange transport documents, based on a background study to be prepared by the Secretariat and on the discussion of the topic by the Working Group on Electronic Data Interchange at its thirtieth session;

5. Reaffirms the mandate of the Commission, as the core legal body within the United Nations system in the field of international trade law, to coordinate legal activities in this field in order to avoid duplication of effort and to promote efficiency, consistency and coherence in the unification and harmonization of international trade law, and in this connection recommends that the Commission, through its secretariat, continue to maintain close cooperation with the other international organs and organizations, including regional organizations, active in the field of international trade law;

6. Also reaffirms the importance, in particular for developing countries, of the work of the Commission concerned with training and technical assistance in the field of international trade law, such as assistance in the preparation of national legislation based on legal texts of the Commission;

7. Expresses the desirability for increased efforts by the Commission in sponsoring seminars and symposia to provide such training and technical assistance, and in this connection:

(a) Expresses its appreciation to the Commission for organizing seminars and briefing missions in Armenia, Azerbaijan, Botswana, China, Colombia, the Czech Republic, Georgia, Kenya, Namibia, Panama, Uzbekistan and Zimbabwe;

(b) Expresses its appreciation to the Governments whose contributions made it possible for the seminars and briefing missions to take place, and appeals to Governments, the relevant United Nations organs, organizations and institutions

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4/ Official Records of the General Assembly, Fifteth Session, Supplement No. 17 (A/50/17), annex I.

and individuals to make voluntary contributions to the United Nations Commission on International Trade Law Trust Fund for Symposia and, where appropriate, to the financing of special projects, and otherwise to assist the secretariat of the Commission in financing and organizing seminars and symposia, in particular in developing countries, and in the award of fellowships to candidates from developing countries to enable them to participate in such seminars and symposia;

(c) Appeals to the United Nations Development Programme and other bodies responsible for development assistance, such as the International Bank for Reconstruction and Development and the European Bank for Reconstruction and Development, as well as to Governments in their bilateral aid programmes, to support the training and technical assistance programme of the Commission and to cooperate and coordinate their activities with those of the Commission;

8. Appeals to Governments, the relevant United Nations organs, organizations and institutions and individuals, in order to ensure full participation by all Member States in the sessions of the Commission and its working groups, to make voluntary contributions to the trust fund for travel assistance to developing countries that are members of the Commission, at their request and in consultation with the Secretary-General;

9. Decides, in order to ensure full participation by all Member States in the sessions of the Commission and its working groups, to continue its consideration in the competent Main Committee during the fiftieth session of the General Assembly of granting travel assistance, within existing resources, to the least developed countries that are members of the Commission, at their request and in consultation with the Secretary-General;

10. Requests the Secretary-General to ensure that adequate resources are allocated for the effective implementation of the programmes of the Commission;

11. Stresses the importance of bringing into effect the conventions emanating from the work of the Commission for the global unification and harmonization of international trade law, and to this end urges States that have not yet done so to consider signing, ratifying or acceding to those conventions;

12. Also requests the Secretary-General to submit a report on the implementation of paragraph 9 above to the General Assembly at its fifty-first session.

DRAFT RESOLUTION II

United Nations Convention on Independent Guarantees and Stand-by Letters of Credit

The General Assembly,

Recalling its resolution 2205 (XXI) of 17 December 1966, by which it created the United Nations Commission on International Trade Law with a mandate to further the progressive harmonization and unification of the law of

international trade and in that respect to bear in mind the interests of all peoples, in particular those of developing countries, in the extensive development of international trade,

Being aware of the uncertainty and lack of uniformity currently prevailing among the various legal systems in the field of independent guarantees and stand-by letters of credit,

Being convinced that the adoption of a convention on independent guarantees and stand-by letters of credit will usefully contribute to overcoming the current uncertainties and disparities in this field of considerable practical importance and thus facilitate the use of such instruments,

Being aware that the Commission, at its twenty-second session in 1989, decided to prepare uniform legislation on independent guarantees and stand-by letters of credit and entrusted the Working Group on International Contract Practices with the preparation of a draft,

Noting that the Working Group devoted eleven sessions, from 1990 to 1995, to the preparation of the draft United Nations Convention on Independent Guarantees and Stand-by Letters of Credit, and that all States and interested international organizations were invited to participate in the preparation of the draft Convention at all the sessions of the Working Group and at the twenty-eighth session of the Commission, either as members or observers, with a full opportunity to speak and make proposals,

Taking note with satisfaction of the decision of the Commission at its twenty-eighth session 5/ to submit the draft Convention to the General Assembly for its consideration,

Taking note of the draft Convention adopted by the Commission, 6/

1. Expresses its appreciation to the United Nations Commission on International Trade Law for preparing the draft United Nations Convention on Independent Guarantees and Stand-by Letters of Credit;

2. Adopts and opens for signature or accession the United Nations Convention on Independent Guarantees and Stand-by Letters of Credit, contained in the annex to the present resolution;

3. Calls upon all Governments to consider becoming party to the Convention.

5/ Official Records of the General Assembly, Fiftieth Session, Supplement No. 17 (A/50/17), para. 201.

6/ Ibid., annex I.

ANNEX

United Nations Convention on Independent Guarantees and Stand-by Letters of Credit

CHAPTER I. SCOPE OF APPLICATION

Article 1

Scope of application

1. This Convention applies to an international undertaking referred to in article 2:

(a) If the place of business of the guarantor/issuer at which the undertaking is issued is in a Contracting State, or

(b) If the rules of private international law lead to the application of the law of a Contracting State,

unless the undertaking excludes the application of the Convention.

2. This Convention applies also to an international letter of credit not falling within article 2 if it expressly states that it is subject to this Convention.

3. The provisions of articles 21 and 22 apply to international undertakings referred to in article 2 independently of paragraph 1 of this article.

Article 2

Undertaking

1. For the purposes of this Convention, an undertaking is an independent commitment, known in international practice as an independent guarantee or as a stand-by letter of credit, given by a bank or other institution or persons ("guarantor/issuer") to pay to the beneficiary a certain or determinable amount upon simple demand or upon demand accompanied by other documents, in conformity with the terms and any documentary conditions of the undertaking, indicating, or from which it is to be inferred, that payment is due because of a default in the performance of an obligation, or because of another contingency, or for money borrowed or advanced, or on account of any mature indebtedness undertaken by the principal/applicant or another person.

2. The undertaking may be given:

(a) At the request or on the instruction of the customer ("principal/applicant") of the guarantor/issuer;

(b) On the instruction of another bank, institution or person ("instructing party") that acts at the request of the customer ("principal/applicant") of that instructing party; or

(c) On behalf of the guarantor/issuer itself.

3. Payment may be stipulated in the undertaking to be made in any form, including:

(a) Payment in a specified currency or unit of account;

(b) Acceptance of a bill of exchange (draft);

(c) Payment on a deferred basis;

(d) Supply of a specified item of value.

4. The undertaking may stipulate that the guarantor/issuer itself is the beneficiary when acting in favour of another person.

Article 3

Independence of undertaking

For the purposes of this Convention, an undertaking is independent where the guarantor/issuer's obligation to the beneficiary is not:

(a) Dependent upon the existence or validity of any underlying transaction, or upon any other undertaking (including stand-by letters of credit or independent guarantees to which confirmations or counter-guarantees relate); or

(b) Subject to any term or condition not appearing in the undertaking, or to any future, uncertain act or event except presentation of documents or another such act or event within a guarantor/issuer's sphere of operations.

Article 4

Internationality of undertaking

1. An undertaking is international if the places of business, as specified in the undertaking, of any two of the following persons are in different States: guarantor/issuer, beneficiary, principal/applicant, instructing party, confirmer.

2. For the purposes of the preceding paragraph:

(a) If the undertaking lists more than one place of business for a given person, the relevant place of business is that which has the closest relationship to the undertaking;

(b) If the undertaking does not specify a place of business for a given person but specifies its habitual residence, that residence is relevant for determining the international character of the undertaking.

CHAPTER II. INTERPRETATION

Article 5

Principles of interpretation

In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in the international practice of independent guarantees and stand-by letters of credit.

Article 6

Definitions

For the purposes of this Convention and unless otherwise indicated in a provision of this Convention or required by the context:

(a) "Undertaking" includes "counter-guarantee" and "confirmation of an undertaking";

(b) "Guarantor/issuer" includes "counter-guarantor" and "confirmer";

(c) "Counter-guarantee" means an undertaking given to the guarantor/issuer of another undertaking by its instructing party and providing for payment upon simple demand or upon demand accompanied by other documents, in conformity with the terms and any documentary conditions of the undertaking, indicating, or from which it is to be inferred, that payment under that other undertaking has been demanded from, or made by, the person issuing that other undertaking;

(d) "Counter-guarantor" means the person issuing a counter-guarantee;

(e) "Confirmation" of an undertaking means an undertaking added to that of the guarantor/issuer, and authorized by the guarantor/issuer, providing the beneficiary with the option of demanding payment from the confirmer instead of from the guarantor/issuer, upon simple demand or upon demand accompanied by other documents, in conformity with the terms and any documentary conditions of the confirmed undertaking, without prejudice to the beneficiary's right to demand payment from the guarantor/issuer;

(f) "Confirmer" means the person adding a confirmation to an undertaking;

(g) "Document" means a communication made in a form that provides a complete record thereof.

CHAPTER III. FORM AND CONTENT OF UNDERTAKING

Article 7

Issuance, form and irrevocability of undertaking

1. Issuance of an undertaking occurs when and where the undertaking leaves the sphere of control of the guarantor/issuer concerned.

2. An undertaking may be issued in any form which preserves a complete record of the text of the undertaking and provides authentication of its source by generally accepted means or by a procedure agreed upon by the guarantor/issuer and the beneficiary.

3. From the time of issuance of an undertaking, a demand for payment may be made in accordance with the terms and conditions of the undertaking, unless the undertaking stipulates a different time.

4. An undertaking is irrevocable upon issuance, unless it stipulates that it is revocable.

Article 8

Amendment

1. An undertaking may not be amended except in the form stipulated in the undertaking or, failing such stipulation, in a form referred to in paragraph 2 of article 7.

2. Unless otherwise stipulated in the undertaking or elsewhere agreed by the guarantor/issuer and the beneficiary, an undertaking is amended upon issuance of the amendment if the amendment has previously been authorized by the beneficiary.

3. Unless otherwise stipulated in the undertaking or elsewhere agreed by the guarantor/issuer and the beneficiary, where any amendment has not previously been authorized by the beneficiary, the undertaking is amended only when the guarantor/issuer receives a notice of acceptance of the amendment by the beneficiary in a form referred to in paragraph 2 of article 7.

4. An amendment of an undertaking has no effect on the rights and obligations of the principal/applicant (or an instructing party) or of a confirmer of the undertaking unless such person consents to the amendment.

Article 9

Transfer of beneficiary's right to demand payment

1. The beneficiary's right to demand payment may be transferred only if authorized in the undertaking, and only to the extent and in the manner authorized in the undertaking.

2. If an undertaking is designated as transferable without specifying whether or not the consent of the guarantor/issuer or another authorized person is required for the actual transfer, neither the guarantor/issuer nor any other authorized person is obliged to effect the transfer except to the extent and in the manner expressly consented to by it.

Article 10

Assignment of records

1. Unless otherwise stipulated in the undertaking or elsewhere agreed by the guarantor/issuer and the beneficiary, the beneficiary may assign to another person any proceeds to which it may be, or may become, entitled under the undertaking.

2. If the guarantor/issuer or another person obliged to effect payment has received a notice originating from the beneficiary, in a form referred to in paragraph 2 of article 7, of the beneficiary's irrevocable assignment, payment to the assignee discharges the obligor, to the extent of its payment, from its liability under the undertaking.

Article 11

Cessation of right to demand payment

1. The right of the beneficiary to demand payment under the undertaking ceases when:

(a) The guarantor/issuer has received a statement by the beneficiary of release from liability in a form referred to in paragraph 2 of article 7;

(b) The beneficiary and the guarantor/issuer have agreed on the termination of the undertaking in the form stipulated in the undertaking or, failing such stipulation, in a form referred to in paragraph 2 of article 7;

(c) The amount available under the undertaking has been paid, unless the undertaking provides for the automatic renewal or for an automatic increase of the amount available or otherwise provides for continuation of the undertaking;

(d) The validity period of the undertaking expires in accordance with the provisions of article 12.

2. The undertaking may stipulate, or the guarantor/issuer and the beneficiary may agree elsewhere, that return of the document embodying the undertaking to the guarantor/issuer, or a procedure functionally equivalent to the return of the document in the case of the issuance of the undertaking in non-paper form, is required for the cessation of the right to demand payment, either alone or in conjunction with one of the events referred to in subparagraphs (a) and (b) of paragraph 1 of this article. However, in no case shall retention of any such document by the beneficiary after the right to demand payment ceases in accordance with subparagraph (c) or (d) of paragraph 1 of this article preserve any rights of the beneficiary under the undertaking.

Article 12

Expiry

The validity period of the undertaking expires:

(a) At the expiry date, which may be a specified calendar date or the last day of a fixed period of time stipulated in the undertaking, provided that, if the expiry date is not a business day at the place of business of the guarantor/issuer at which the undertaking is issued, or of another person or at another place stipulated in the undertaking for presentation of the demand for payment, expiry occurs on the first business day which follows;

(b) If expiry depends according to the undertaking on the occurrence of an act or event not within the guarantor/issuer's sphere of operations, when the guarantor/issuer is advised that the act or event has occurred by presentation of the document specified for that purpose in the undertaking or, if no such document is specified, of a certification by the beneficiary of the occurrence of the act or event;

(c) If the undertaking does not state an expiry date, or if the act or event on which expiry is stated to depend has not yet been established by presentation of the required document and an expiry date has not been stated in addition, when six years have elapsed from the date of issuance of the undertaking.

CHAPTER IV. RIGHTS, OBLIGATIONS AND DEFENCES

Article 13

Determination of rights and obligations

1. The rights and obligations of the guarantor/issuer and the beneficiary arising from the undertaking are determined by the terms and conditions set forth in the undertaking, including any rules, general conditions or usages specifically referred to therein, and by the provisions of this Convention.

2. In interpreting terms and conditions of the undertaking and in settling questions that are not addressed by the terms and conditions of the undertaking

or by the provisions of this Convention, regard shall be had to generally accepted international rules and usages of independent guarantee or stand-by letter of credit practice.

Article 14

Standard of conduct and liability of guarantor/issuer

1. In discharging its obligations under the undertaking and this Convention, the guarantor/issuer shall act in good faith and exercise reasonable care having due regard to generally accepted standards of international practice of independent guarantees or stand-by letters of credit.

2. A guarantor/issuer may not be exempted from liability for its failure to act in good faith or for any grossly negligent conduct.

Article 15

Demand

1. Any demand for payment under the undertaking shall be made in a form referred to in paragraph 2 of article 7 and in conformity with the terms and conditions of the undertaking.

2. Unless otherwise stipulated in the undertaking, the demand and any certification or other document required by the undertaking shall be presented, within the time that a demand for payment may be made, to the guarantor/issuer at the place where the undertaking was issued.

3. The beneficiary, when demanding payment, is deemed to certify that the demand is not in bad faith and that none of the elements referred to in subparagraphs (a), (b) and (c) of paragraph 1 of article 19 are present.

Article 16

Examination of demand and accompanying documents

1. The guarantor/issuer shall examine the demand and any accompanying documents in accordance with the standard of conduct referred to in paragraph 1 of article 14. In determining whether documents are in facial conformity with the terms and conditions of the undertaking, and are consistent with one another, the guarantor/issuer shall have due regard to the applicable international standard of independent guarantee or stand-by letter of credit.

2. Unless otherwise stipulated in the undertaking or elsewhere agreed by the guarantor/issuer and the beneficiary, the guarantor/issuer shall have reasonable time, but not more than seven business days following the day of receipt of the demand and any accompanying documents, in which to:

(a) Examine the demand and any accompanying documents;

(b) Decide whether or not to pay;

(c) If the decision is not to pay, issue notice thereof to the beneficiary.

The notice referred to in subparagraph (c) above shall, unless otherwise stipulated in the undertaking or elsewhere agreed by the guarantor/issuer and the beneficiary, be made by teletransmission or, if that is not possible, by other expeditious means and indicate the reason for the decision not to pay.

Article 17

Payment

1. Subject to article 19, the guarantor/issuer shall pay against a demand made in accordance with the provisions of article 15. Following a determination that a demand for payment so conforms, payment shall be made promptly, unless the undertaking stipulates payment on a deferred basis, in which case payment shall be made at the stipulated time.

2. Any payment against a demand that is not in accordance with the provisions of article 15 does not prejudice the rights of the principal/applicant.

Article 18

Set-off

Unless otherwise stipulated in the undertaking or elsewhere agreed by the guarantor/issuer and the beneficiary, the guarantor/issuer may discharge the payment obligation under the undertaking by availing itself of a right of set-off, except with any claim assigned to it by the principal/applicant or the instructing party.

Article 19

Exception to payment obligation

1. If it is manifest and clear that:

(a) Any document is not genuine or has been falsified;

(b) No payment is due on the basis asserted in the demand and the supporting documents; or

(c) Judging by the type and purpose of the undertaking, the demand has no conceivable basis,

the guarantor/issuer, acting in good faith, has a right, as against the beneficiary, to withhold payment.

2. For the purposes of subparagraph (c) of paragraph 1 of this article, the following are types of situations in which a demand has no conceivable basis:

(a) The contingency or risk against which the undertaking was designed to secure the beneficiary has undoubtedly not materialized;

(b) The underlying obligation of the principal/applicant has been declared invalid by a court or arbitral tribunal, unless the undertaking indicates that such contingency falls within the risk to be covered by the undertaking;

(c) The underlying obligation has undoubtedly been fulfilled to the satisfaction of the beneficiary;

(d) Fulfilment of the underlying obligation has clearly been prevented by wilful misconduct of the beneficiary;

(e) In the case of a demand under a counter-guarantee, the beneficiary of the counter-guarantee has made payment in bad faith as guarantor/issuer of the undertaking to which the counter-guarantee relates.

3. In the circumstances set out in subparagraphs (a), (b) and (c) of paragraph 1 of this article, the principal/applicant is entitled to provisional court measures in accordance with article 20.

CHAPTER V. PROVISIONAL COURT MEASURES

Article 20

Provisional court measures

1. Where, on an application by the principal/applicant or the instructing party, it is shown that there is a high probability that, with regard to a demand made, or expected to be made, by the beneficiary, one of the circumstances referred in subparagraphs (a), (b) and (c) of paragraph 1 of article 19 is present, the court, on the basis of immediately available strong evidence, may:

(a) Issue a provisional order to the effect that the beneficiary does not receive payment, including an order that the guarantor/issuer hold the amount of the undertaking, or

(b) Issue a provisional order to the effect that the proceeds of the undertaking paid to the beneficiary are blocked, taking into account whether in the absence of such an order the principal/applicant would be likely to suffer serious harm.

2. The court, when issuing a provisional order referred to in paragraph 1 of this article, may require the person applying therefor to furnish such form of security as the court deems appropriate.

3. The court may not issue a provisional order of the kind referred to in paragraph 1 of this article based on any objection to payment other than those referred to in subparagraphs (a), (b) and (c) of paragraph 1 of article 19, or use of the undertaking for a criminal purpose.

CHAPTER VI. CONFLICT OF LAWS

Article 21

Choice of applicable law

The undertaking is governed by the law the choice of which is:

(a) Stipulated in the undertaking or demonstrated by the terms and conditions of the undertaking; or

(b) Agreed elsewhere by the guarantor/issuer and the beneficiary.

Article 22

Determination of applicable law

Failing a choice of law in accordance with article 21, the undertaking is governed by the law of the State where the guarantor/issuer has that place of business at which the undertaking was issued.

CHAPTER VII. FINAL CLAUSES

Article 23

Depositary

The Secretary-General of the United Nations is the depositary of this Convention.

Article 24

Signature, ratification, acceptance, approval, accession

1. This Convention is open for signature by all States at the Headquarters of the United Nations, New York, until ... [the date two years from the date of adoption].

2. This Convention is subject to ratification, acceptance or approval by the signatory States.

3. This Convention is open to accession by all States which are not signatory States as from the date it is open for signature.

4. Instruments of ratification, acceptance, approval and accession are to be deposited with the Secretary-General of the United Nations.

Article 25

Application to territorial units

1. If a State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only one or more of them, and may at any time substitute another declaration for its earlier declaration.

2. These declarations are to state expressly the territorial units to which the Convention extends.

3. If, by virtue of a declaration under this article, this Convention does not extend to all territorial units of a State and the place of business of the guarantor/issuer or of the beneficiary is located in a territorial unit to which the Convention does not extend, this place of business is considered not to be in a Contracting State.

4. If a State makes no declaration under paragraph 1 of this article, the Convention is to extend to all territorial units of that State.

Article 26

Effect of declaration

1. Declarations made under article 25 at the time of signature are subject to confirmation upon ratification, acceptance or approval.

2. Declarations and confirmations of declarations are to be in writing and to be formally notified to the depositary.

3. A declaration takes effect simultaneously with the entry into force of this Convention in respect of the State concerned. However, a declaration of which the depositary receives formal notification after such entry into force takes effect on the first day of the month following the expiration of six months after the date of its receipt by the depositary.

4. Any State which makes a declaration under article 25 may withdraw it at any time by a formal notification in writing addressed to the depositary. Such

withdrawal takes effect on the first day of the month following the expiration of six months after the date of the receipt of the notification of the depositary.

Article 27

Reservations

No reservations may be made to this Convention.

Article 28

Entry into force

1. This Convention enters into force on the first day of the month following the expiration of one year from the date of the deposit of the fifth instrument of ratification, acceptance, approval or accession.

2. For each State which becomes a Contracting State to this Convention after the date of the deposit of the fifth instrument of ratification, acceptance, approval or accession, this Convention enters into force on the first day of the month following the expiration of one year after the date of the deposit of the appropriate instrument on behalf of that State.

3. This Convention applies only to undertakings issued on or after the date when the Convention enters into force in respect of the Contracting State referred to in subparagraph (a) or the Contracting State referred to in subparagraph (b) of paragraph 1 of article 1.

Article 29

Denunciation

1. A Contracting State may denounce this Convention at any time by means of a notification in writing addressed to the depositary.

2. The denunciation takes effect on the first day of the month following the expiration of one year after the notification is received by the depositary. Where a longer period is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

DONE at ..., this ... day of ... one thousand nine hundred and ninety-..., in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized by their respective Governments, have signed the present Convention.